



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

April 24, 2008

Mr. R. W. Hardison – Registered Agent
Richmond Hill Development, Inc.
506 North High Street
Columbia, Tennessee 38401

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7006 0810 0000 1061 7306

Subject: DIRECTOR'S ORDER NO. WPC08-0077
RICHMOND HILL ESTATES
MAURY COUNTY, TENNESSEE

Dear Mr. Hardison:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Mark Jordan at (615) 532-0675.

Sincerely,

Patrick N. Parker, Manager
Enforcement and Compliance Section

PNP:MAJ

cc: DWPC – EFO-Columbia
DWPC – Compliance File
OGC

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction

Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VI.

Coleman Branch and the unnamed tributary to Coleman Branch, described herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VII.

On August 29, 2006, the Respondent submitted a NOI, SWPPP, and appropriate fee requesting coverage under the TNCGP for construction activities at the site. Southern Excavating and Utilities (Southern Excavating) signed the NOI as the primary contractor at the site. The division issued coverage under the TNCGP on September 22, 2006, and assigned tracking number TNR180602.

VIII.

On November 29, 2006, division personnel from the Columbia Environmental Field Office (CLEFO) conducted a complaint investigation at the site. Division personnel noted that Erosion Prevention and Sediment Control (EPSC) measures had been installed in accordance with the SWPPP, with the exception of a required sediment basin. Division personnel met with

representatives of Southern Excavating and requested that the sediment basin be installed as soon as soil conditions allowed. The NOC, SWPPP, and EPSC inspection reports were available on site as required by the TNCGP. Division personnel did not observe evidence of sediment leaving the site.

IX.

On October 11, 2007, Southern Excavating submitted a Notice of Termination (NOT) to the division indicating that their activities at the site were complete and operational control of the site was the sole responsibility of the Respondent.

X.

On January 31, 2008, division personnel conducted a complaint investigation and noted that the majority of the site drained to one common point in the direction of the unnamed tributary to Coleman Branch. The site appeared to have been idle for an extended period of time, was bare and unstable, deep erosion gullies had formed on slopes, and the EPSC measures at the point of common drainage were overwhelmed by sediment deposits. The sediment basin requested during the site visit of November 29, 2006, and located at the point of common drainage, was not constructed to retain sediment on site. A sediment deposit approximately twenty-five feet wide, six inches deep, and several hundred feet long had formed off-site in the direction of the unnamed tributary to Coleman Branch. Division personnel noted sediment deposits up to twelve inches deep in the unnamed tributary to Coleman Branch, extending several hundred feet downstream of the site, causing a condition of pollution.

The NOC, SWPPP, and EPSC inspection reports were not available on site. Division personnel contacted the Respondent and explained the findings of the complaint investigation and requested copies of the EPSC inspection reports.

XI.

On February 4, 2008, the division received copies of the EPSC inspection reports. Based on the frequency of inspections and the lack of details regarding the scope of the inspections, repair and maintenance dates, and other requirements of the TNCGP, the reports were deemed inadequate.

XII.

On February 7, 2008, division personnel returned to the site in order to conduct a Natural Resources Damage Assessment (NRDA) on the streams impacted by sediment loss from the site. Division personnel noted sediment deposits up two feet deep throughout the length of the unnamed tributary to Coleman Branch and continuing on to the confluence with Coleman Branch. Division personnel noted sediment deposits up to one foot deep up to the confluence of Coleman Branch with Carters Creek. The flow from Coleman Branch exhibited a clear color contrast with Carters Creek due to sediment load. Division personnel determined that approximately 2,600 linear feet (LF) of stream exhibited moderate to severe levels of impact due to sediment discharge from the site.

XIII.

On February 19, 2008, the division issued a Notice of Violation (NOV) to the Respondent for the violations noted during the January 31, 2008, complaint investigation. The Respondent was instructed to submit an updated SWPPP within 15 days of receipt and to repair or replace all inadequate EPSC measures as necessary. The Respondent was further instructed to immediately stabilize the site if it was to remain idle.

XIV.

On April 1, 2008, division personnel conducted a site investigation and noted that efforts at site stabilization and EPSC measure repair or replacement had not been implemented as requested in the February 19, 2008, NOV. Large areas of the site remained bare and unstable, existing EPSC measures had failed, erosion gullies continued to form and large amounts of sediment continued to migrate off site. A file review determined that the updated SWPPP requested in the February 19, 2008, NOV had not been submitted.

XV.

On April 11, 2008, the division issued a NOV to the Respondent for violations noted during the April 1, 2008 site investigation and for refusal to submit the updated SWPPP as requested in the previous NOV. To date, the updated SWPPP has not been submitted nor has the Respondent contacted the division.

XVI.

During the course of investigation the division incurred DAMAGES in the amount of EIGHT HUNDRED FORTY EIGHT DOLLARS AND FIFTEEN CENTS (\$848.15).

VIOLATIONS

XVII.

By failing to comply with the terms and conditions of the TNCGP, and refusing to furnish information, the Respondent has violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately

owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XVIII.

By causing a condition of pollution in the unnamed tributary to Coleman Branch and to Coleman Branch, the Respondent has violated T.C.A. Section § 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XIX.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent.

1. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, establish effective EPSC measures such that sediment does not leave the site. These professionally designed measures shall be chosen and installed in accordance with Tennessee Erosion Control Handbook.
2. The Respondent shall, within 7 days of establishing effective EPSC measures, submit written documentation and photographic evidence indicating that these measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the CLEFO at 2484 Park Plus Drive, Columbia, Tennessee 38401 and a copy to the Water Pollution Control Enforcement and Compliance (E&C) Section Manager, at 401 Church Street, 6th Floor L&C Annex, Nashville, Tennessee 37243-1534.
3. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, submit a Corrective Action Plan (CAP) for the removal of the accumulated sediment from the unnamed tributary to Coleman Branch and Coleman Branch. The CAP shall be

submitted for review and approval to the Water Pollution Control Manager in the CLEFO at the address shown in Item 2. The Respondent shall correct any deficiencies the division finds and submit a corrected CAP within 30 days of notification of any deficiencies.

5. The Respondent shall, within 6 months of approval from the division, complete the actions outlined in the approved CAP and no ARAP permitting will be required for these approved activities. The Respondent shall submit notification of the completion of the approved activities to the division at the address shown in Item 2 within 7 days of completion.
6. The Respondent shall pay DAMAGES to the division in the amount of EIGHT HUNDRED FORTY EIGHT DOLLARS AND FIFTEEN CENTS (\$848.15) within 30 days of receipt of this ORDER AND ASSESSMENT.
7. The Respondent shall pay a NATURAL RESOURCES DAMAGE ASSESSMENT in the amount of TWO HUNDRED SEVENTY SEVEN THOUSAND FOUR HUNDRED AND SIXTY FOUR DOLLARS (\$277,464.00).
8. The Respondent shall pay a CIVIL PENALTY of FORTY EIGHT THOUSAND DOLLARS (\$48,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of THIRTEEN THOUSAND DOLLARS (\$13,000.00).

- b. If the Respondent fails to comply with Part XIX, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
- c. If the Respondent fails to comply with Part XIX, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
- d. If the Respondent fails to comply with Part XIX, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
- e. If the Respondent fails to comply with Part XIX, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.
- f. If the Respondent fails to comply with Part XIX, item 5 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of SEVEN THOUSAND DOLLARS (\$7,000.00), payable within 30 days of default.

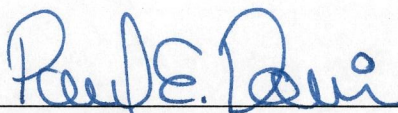
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in

writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 24th day of April 2008.



Paul E. Davis, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this ORDER AND ASSESSMENT. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this ORDER AND ASSESSMENT, the ORDER AND ASSESSMENT shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the ORDER AND ASSESSMENT will not be subject to review pursuant to T.C.A. §§ 69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made to "Treasurer, State of Tennessee" and shall be sent to the Division of Fiscal Services, Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L & C Annex, 401 Church Street, Nashville, TN 37243. The case number, shown on the first page of this Order and Assessment, should be included on or with the payment. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor L & C Annex, 401 Church Street, Nashville, TN 37243.